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My Ref: PCP 10/14/1

Your Ref: DGO-0009

17 September 2008

Dear Melissa

Porthmadog Harbour Byelaws

Further to your recent communications with my colleague Linturn Hopkins, please see the following comments from our consultees regarding the above draft byelaws. Please note that our in-house legal advisers have declined to comment on the draft byelaws at this stage.

Byelaw 3

In Byelaw 3, under the definition of the "Collision Regulations", Trinity House (TH) and the Royal Yachting Association (RYA) point out that the reference should be to Sections 85 and 86 of the Merchant Shipping Act 1995. However, TH also point out that the term "Collision Regulations" is not actually used in the byelaws.

TH point out that the definitions in the byelaws for "Harbourmaster" and "Hovercraft" are different to those used in the Porthmadog Harbour Revision Order 1988, and that in the aforementioned Order "Vessel" and "Personal Watercraft" have separate definitions whereas in the byelaws they are combined. They suggest that these inconsistencies should be addressed.

The RYA feel that Byelaw 3 should contain a definition of small vessels (e.g. less than 24m in length (as defined in the Merchant Shipping (Tonnage) Regulations 1997.)

As "Trinity House" is referred to in Byelaw 50, TH suggest that it should be defined in Byelaw 3. The definition contained in the 1988 Order could be used.

Byelaw 7

RYA do not believe that it is reasonable to require a master to ensure that a vessel lying to a mooring or made fast alongside a quay is permanently crewed or to make crew readily available. They therefore consider that the words from "and that there are sufficient crew ..." to the end of the Byelaw should be deleted. Alternatively, the words from "and that there are sufficient crew ..." to the end of the Byelaw should be expressly applied only to vessels other than small vessels.

Byelaw 10

RYA feel it is not clear what is meant by the expressions "render his vessel incapable of movement" (10(1)) and "capable of being safely moved by means of its own propulsive machinery" (10(2)). In their view, it would be unreasonable for such a Byelaw to prohibit a master from taking steps to ensure that his vessel is not stolen or from removing the sails from a sailing vessel that does not have auxiliary power. They believe that the objective should be simply for the Harbourmaster to be able to move vessels within the Harbour should the need arise and they consider that this is adequately provided for in the first part of Byelaw 7. They therefore take the view that Byelaw 10 should be deleted.

Byelaw 11

RYA consider that the word "shall" in the first line should be deleted and replaced with the words "other than a small vessel shall, if so requested by the Harbourmaster,"

Byelaw 17

RYA consider that this Byelaw should apply to power driven vessels only. Small sailing vessels and windsurfers usually have no means of measuring their speed. In addition, the Byelaws are only applicable within the Harbour. They therefore consider that Byelaw 17 should be deleted and replaced with "Except with the permission of the Harbourmaster and subject to Byelaw 12, the master of any power-driven vessel shall not cause or permit such vessel to proceed at a speed of greater than 6 knots in any part of the Harbour".

Byelaw 21(a)

RYA feel the word "area" at the end of the sub-Clause is superfluous and should be deleted. In the paragraph at the end of Byelaw 21, they consider that the words from "where the damage to a vessel ..." to the end of the Byelaw should be deleted and be replaced with the words "if the vessel has been damaged to such extent as affects or is likely to affect its seaworthiness, the master shall not move the vessel except to clear the fairway or to moor or anchor in safety, unless he has the permission of, and acts in accordance with the directions of, the Harbourmaster."

Byelaw 23

RYA believe that this should be expressed to be subject to any public right of access across a public slipway or quay.

Byelaw 31

RYA consider that this byelaw potentially interferes with the public right of navigation. The words from "designate any part of the Harbour for use ..." to the end of the Byelaw should be deleted and replaced with "set apart or designate any land or works within the Harbour owned or managed by the Council for the exclusive, partial or preferential use or accommodation of any particular trade, activity, person, vessel or class of vessels or goods and no person or vessel shall, otherwise than in accordance with the setting apart or designation, make use of any lands or works so set apart or designated without the consent of the Harbourmaster. Nothing in this Byelaw shall authorise the prohibition of navigation within any part of the harbour, nor shall it authorise interference with the public right of way across public slipways and public quays."

Byelaw 32

RYA point out that this interferes with the public right of navigation and should be either disapplied to small vessels or deleted in its entirety.

Byelaw 41

RYA point out that there is no legal obligation for a vessel to be insured. As such, the Harbourmaster has no authority to require evidence of insurance and Byelaw 41 should be deleted.

Byelaws 42(2)(a) and (b)

In the opinion of RYA, these appear to be unduly onerous and should be deleted.

Byelaw 43

RYA point out that the waters in the Harbour are subject to the public right of navigation and a personal watercraft is just as entitled to exercise that right as any other small power driven vessel. Therefore, they believe that Byelaw 43 should be deleted.

Other

TH suggest that you might wish to consider including an additional byelaw prohibiting exhibition of lights in the harbour which could be mistaken for aids to navigation or which interfere with the night vision of mariners.

TH also point out that Byelaw 1 and the signing/sealing provisions at the end of the Byelaws refer to 2006. These references should be updated to 2008.

The RYA feel that they have no option but to make a formal objection to the draft byelaws at this stage. However notwithstanding their objection, they would be keen to work with you in an effort to resolve their concerns over the proposed Byelaws and they look forward discussing the matter in due course. The contact details are:

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If you have any questions on the above please do not hesitate to contact me.

Yours sincerely

Mike Davey